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IN DIVISION ONE OF THE COURT OF APPEALS

STATE OF WASHINGTON

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JAMES K. BARNHART

Petitioner,

v.

THE CITY OF BOTHELL

Respondent.

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APPELLANT'S OPENING BRIEF

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(King County Superior Court # 08-1-07319-6 SEA)

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#### A. Statement of Issue

Mr. Barnhart challenges the King County Superior Court decision dated April 10, 2009 allowing the City of Bothell to seat jurors who were residents of King County in a criminal case in which the offense was committed in Snohomish County.

#### B. Statement of the Case

The Superior Court noted that Article One, Section 22 of the Washington Constitution guarantees an accused's right to trial by an impartial jury of the county in which the charge is charged to have been committed.

However, the Court also noted that RCW 2.36.050 allows cities to select jurors at random from the population served by the court. The City of Bothell, and thus the criminal jurisdiction of the city straddles both King and Snohomish County. Prior to trial, the defendant filed a demand for a jury drawn exclusively from Snohomish County.

The Appellant argues the Court erred by ruling RCW 2.36.050 "implements the constitutional provision and the statutory requirements were met here." The Appellant believes the statute cited by the Court ignores the simple language of Article One, Section 22 of the State

Constitution, and thus he was tried by a jury including jurors from King County despite the fact the offense was charged to have been committed in Snohomish County.

#### C. Procedural and Factual History of the Case

On July 28, 2006 Bothell Police arrested and booked James Barnhart into the Snohomish County Jail on suspicion of Harassment, (RCW 9A.46.020). The City of Bothell charged the defendant by citation with the crime of Harassment. The defendant appeared for his arraignment from out of custody on August 15, 2006 and entered a plea of “not guilty”. The court found probable cause and imposed conditions of release.

On February 6, 2007 the defense filed a Motion to Dismiss the Harassment charge, citing an absence of evidence to support the charge. On April 3, 2007 the city conceded that the evidence did not support the Harassment charge. At the same hearing, the city amended the charge to Stalking (RCW 9A.46.110).

On June 11, 2007 the defense filed an objection to trial in King County, and to impaneling residents of King County as jurors. The defense also noted an objection on constitutional grounds to the city’s application of the Stalking statute under the facts of the case. On

November 5, 2007 the city filed an amended written complaint alleging the defendant committed the crime of Stalking.

On November 7, 2007 the Bothell Municipal Court held a jury trial. The defense renewed the objection to seating King County residents on the jury. The court later noted two of the seated jurors were residents of King County. The jury convicted James Barnhart of Stalking.

The Appellant filed a direct appeal in the King County Superior Court challenging the makeup of the jury. The City of Bothell conceded the crime occurred entirely within Snohomish County, and Judge Teresa Doyle accepted the location of the crime and the makeup of the jury as verities on appeal. On April 10, 2009 Judge Doyle affirmed the trial court finding no error because “all but two jurors were residents of Snohomish County”.

On July 29, 2009 this Court accepted Discretionary Review to decide the Constitutional question as to what qualifies as trial by a “jury of the county where the crime is alleged to have been committed”.

#### E. Argument

The trial court erred by seating jurors who were King County residents.

Article One, Section 22 of the Washington State Constitution guarantees accused persons the right to a jury selected from the county in

which the crime is alleged to have been committed. RCW 2.36.050 authorizes courts of limited jurisdictions to select jurors from a pool drawn from “the population served by the court”. Washington Courts have approved jury pools drawn from portions of the county where the court is located. State v. Twyman, 143 Wn.2d 115, 122 (2001). More recently the Washington Supreme Court found Tukwila Municipal Court’s jury pool complied with RCW 2.36.050 despite drawing some jurors from outside the Tukwila city limits. Tukwila v. Garrett, Slip Opinion 81067-2 (2008). In both cases jurors were drawn from a portion of the county where the crime was alleged to have been committed. Whether RCW 2.36.050 violates Article One, Section 22 of the State Constitution when jurors are drawn from “the area served by the court” which encompasses part of a county where none of the criminal acts alleged occurred appears to be a novel question.

The City of Bothell is served by the Bothell Municipal Court, located in King County. The city limits of Bothell encompass both a portion of King County as well as a portion of Snohomish County. See City’s Exhibit One. All of the criminal acts alleged by the City in this case transpired in Snohomish County. Id. The defendant in the case at bar made timely objections, both prior to trial and immediately prior to jury selection on the day of trial. See Defense Trial Objections filed June 12,

2007 and Bothell Municipal Court Docket Case #15995, November 7, 2007. Nevertheless, the trial court summoned and seated two jurors who reside in King County. See Bothell Municipal Court Case #15995 docket entry dated May 6, 2008.

Statutes are presumed to be constitutional and the party challenging the constitutionality of the law bears the burden of showing the law is unconstitutional beyond a reasonable doubt. State v. Dixon, 78 Wn.2d 796 (1971). If possible a court must construe a statute so as to render it constitutional. State v. Reyes, 104 Wn.2d 35, 41 (1985). A statute that is constitutional on its face may still be applied in a manner that violates the constitution. State v. Clinkenbeard, 130 Wn.App. 552, 560 (2005).

While it appears RCW 2.36.050 does not contemplate a court of limited jurisdiction which serves a population of residents from two different counties, the plain language of Article One, Section 22 requires Bothell to provide a jury panel drawn from Snohomish County when the only criminal acts alleged took place entirely within Snohomish County. Washington courts have consistently held the language “of the county” with regard to jury selection means jurors must come from some part of the county where the crime is alleged to have been committed. State v. Newcomb, 58 Wash. 414, 418 (1910). And while the courts have



approved drawing jurors from a portion of the appropriate county, no court has held RCW 2.36.050 allows jurors from a county different from the county where the crime was allegedly committed to serve in a criminal case. See Tukwila v. Garrett at 12. Because the court seated jurors from a county other than the county where the offense took place, the defendant's right under Article One, Section 22 of the Washington State Constitution right to a jury trial was violated.

#### F. Conclusion

The City of Bothell's refusal to grant a Snohomish County criminal defendant the right to a jury of Snohomish County under Article One, Section 22 of the State Constitution. The alternative is for any prosecuting authority to draw jurors from other counties when such a prosecutor has access to multiple (or alternative) jury pools.

Respectfully Submitted October 16, 2009.

A handwritten signature in black ink, appearing to read 'Mark R. Stephens', is written over a horizontal line.

Mark R. Stephens, Attorney for the Petitioner  
WSBA #26110